CF0000069061

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Criminal Appeal No. 787 /1996

Appellants In Jail : 1. Shanti Bai, widow of Gopal Mahar, aged 35 years;

B. 2. Deoraj, son of Gopal Singh Mahar, aged 19 years, both resident of village Thakurtola, P.S. Gandai district Rajnandgaon.

-Vs-

Respondent : State of Machya Pradesh.

6102
on 19-6-19

CRIMINAL APPEAL UNDER SECTION 374 OF THE CODE OF CRIMINAL PROCEDURE:

(29)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 783 of 1996

Appellant : **Ramesh**

Vs.

Respondent : **State of Madhya Pradesh**

CRIMINAL APPEAL NO. 787 of 1996

Appellants : 1. **Shanti Bai**

2. **Deoraj**

Vs.

Respondent : **State of Madhya Pradesh**

Shri Alok Pandey and Shri Shrawan Chandel learned counsel for the accused/appellants.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri Ravindra Agrawal, P.L. for the respondent/State.

ORAL JUDGMENT
(07.03.2006)

Per L.C.Bhadoo, J

Criminal Appeal No. 783 of 1996 filed by accused/appellant Ramesh and Cr. A. No. 787 of 1996 filed by accused/appellants Shanti Bai and Deoraj are being disposed of by this common judgment as both these appeals are arising out of the same crime and same judgment passed in S.T. No. 7/94.

[पीछे देखिये

XI-HC-22

(30)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
2.	The accused/appellants have preferred these appeals under Section 374(2) of the Criminal Procedure Code questioning the legality and correctness of the judgment of conviction and order of sentence dated 12.04.96 passed by learned Additional Sessions Judge, Khairagarh in S.T. No. 7/94 whereby the learned Additional Sessions Judge after holding the accused/appellants guilty for commission of murder of one Rambha Bai convicted them under Sections 148,302 and 302 read with Section 149 of the IPC and sentenced each of the accused/appellants to undergo RI for six months under Section 148 of the IPC and to undergo imprisonment for life under Sections 302 and 302/149 of the IPC and to pay a fine of Rs. 1,000/-, in default of payment of fine to further undergo RI for six months. However accused/appellant Ramji has been acquitted of the above charges.	
3	Case of the prosecution, in brief, is that Khem Prasad P.W.-8 lodged the report Ex.P-13 in the police station Gandai to the effect that he is a resident of village Thakur Tola and a day before thereto at about 11.00 p.m. he saw that Neelambar Gond, Lomus Gond, Mehttar Vishwakarma and other villagers were standing near the house of Gopal who informed him that Gopal Mahar, his family members and one of his guests have murdered Rambha Bai doubting her to be a witch. Accused Gopal dragged Rambha Bai inside his house by catching hold of her hair and thereafter all these persons assaulted her with clubs and murdered her. He entered the house of Gopal and saw that Rambha Bai was lying dead in a pool of blood. He did not come to lodge the report under the impression that village Kotwar might have reported the matter but now he has come to lodge the report. Receiving this report the S.H.O. of police	

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... **सन्** 200

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

station Gandai registered the crime under Section 364 and 302 of the IPC and left for the scene of occurrence and prepared panchnama Ex.P-1 of the body of Rambha Bai. Mouka Panchnama Ex. P-2 was also prepared by him. Seizure Panchnama Ex.P-3 was prepared regarding presence of Gopal, Tej Singh, Deoraj Singh, Ramesh, Ramji, Santosh and Shanti Bai on the place of occurrence. The Investigating Officer took into possession one red colour *Trishul, one 22", one 16" and one 25" iron Trishuls, one sword, one coconut wrapped in red cloth and one coconut in rose colour cloth, one triangular red flag, one photograph of Kaali Maata, one red colour wood along with a glass frame, one photograph of Durga Maata and one brass instrument meant for performing pooja, one brass lamp and one red cloth* under P-4. Based on the memorandum P-6, given by the accused/appellant Gopal, following articles were recovered under Ex.P-5 :

a. one bamboo stick of 22 " in length smeared with chilli powder and some liquid type fluid was also stuck on the stick,
b. two pieces of bamboo club in the size of 13" and 15" &
c. one cracked bamboo stick of 34" in length, some long black hair was stuck with the stick.

4 Site plan Ex.P-8 was prepared by the Patwari. Dead body of Rambha Bai was sent for postmortem examination to Primary Health Centre, Chhui Khadan under Ex.P-9, where Dr. Ashok Khare conducted the post mortem on the body of Rambha Bai and prepared post mortem report Ex. P-10. The club-weapon of offence was also examined by the doctor and gave his opinion Ex.P-11. After completion of the investigation, charge sheet

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

~~was filed for the commission of offence under Sections 364, 302, 147,148~~ and 149 of the IPC in the Court of Judicial Magistrate First Class, Khairagarh against accused/appellants Gopal, Ramji, Ramesh, Shanti Bai and Deoraj. However, accused/appellants Santosh Singh and Tej Singh being minor, their case was referred to the Juvenile Justice Board. Learned Judicial Magistrate First Class committed the case to the Sessions Judge, Rajnandgaon from where learned Additional Sessions Judge, Khairagarh received the case on transfer for trial.

5. However, as accused/~~appellant~~ Gopal died during the trial; therefore, accused/appellants Ramji, Ramesh ,Shanti Bai and Deoraj faced the trial before the Additional Sessions Judge, Rajnandgaon and learned Session Judge after completion of the trial and after hearing the counsel for the parties convicted and sentenced the accused/appellants as mentioned in paragraph two of the judgment.

6. We have heard Shri Alok Pandey, counsel on behalf of the accused/appellant Ramesh and Shri Shrawan Chandel, counsel on behalf of the accused/appellants Shanti Bai and Deoraj; and Shri U.N.S.Deo, learned G.A. with Shri Ravindra Agrawal, P.L. on behalf of the State.

7. Homicidal death of Rambha Bai is not in dispute.

8. Shri Shrawan Chandel, learned counsel for the accused/appellants, argued that as far as accused Deoraj is concerned there is no evidence against him and he has been convicted without any evidence against him and without proving the involvement of the accused/appellant in the crime in question. As far as accused/appellant Shanti Bai is concerned, he argued that there are no allegations in the evidence that Shanti Bai in any

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

38

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	way assaulted deceased Rambha Bai. He also urged that as per the evidence of witnesses that they saw the accused persons manhandling the body of Rambha Bai after her death therefore no offence was made out against Shanti Bai also. Shri Alok Pandey, counsel on behalf of accused/appellant Ramesh argued that so far as accused Ramesh is concerned, no club has been recovered from him. Moreover evidence against him is that he was found beating the deceased after her death. P.W.-7 Jageshwar who is the son of deceased Rambha Bai and has been produced as the eye witness has not stated anything against accused Ramesh that he in any way assaulted the deceased. The further argument of both the counsel was that as per the prosecution evidence the main allegations were against accused/appellant Gopal who dragged the deceased in his house and assaulted. But accused Gopal has already died during the trial and there is no evidence against the accused/appellants, therefore, they are entitled for acquittal.	
9.	On the other hand Shri U.N.S.Deo, learned G.A. with Shri Ravindra Agrawal, P.L. on behalf of the State supported the judgment of the trial Court.	
10.	In order to appreciate the arguments advanced by the respective counsel we have perused the prosecution evidence. P.W.-3 Neelambar has stated that at about 2.00 p.m. when he returned from the agricultural field, he came to know about beating (*Maarpeet)* of Rambha Bai in the house of accused Gopal whereupon he went to the house of Gopal and saw that Shanti Bai, Gopal and his co-brother were beating. After indicating towards accused/appellant Ramesh, P.W.-3 Neelambar stated that he is the co-brother of Gopal and was present in the house of Gopal on the date	

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(34)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of incident. Accused/appellant Gopal was assaulting Rambha Bai and the other accused persons were assaulting her with club. Deceased Rambha Bai was screaming and saying "Hey Dai, Hey Dai". He asked the accused persons not to assault but they did not stop. He went back to his house. When in the evening he came to a shop in front of the house of accused Gopal he came to know that Rambha Bai has died. Kotwar Bhaggu Das also saw that Rambha Bai lying dead in the house of Gopal. There was cloth on the lower part of the body of Rambha Bai and blood was oozing out of the body. Then they asked Bhaggu Das in the evening to lodge the report in the police station.

11. P.W.-5 Vasudeo Singh has stated that at about 2.30-3.00 p.m. when he was returning from the field he came to know that one woman is being beaten in the house of Gopal Baiga, whereupon he went there and saw that Rambha Bai was lying and she was unconscious. Accused persons Gopal, his wife Shanti Bai and his co-brother Ramesh were having club in their hands and they were torturing Rambha Bai. They were pressing chilli powder with the help of bamboo clubs on which he asked them not to do so but they asked him not to intervene. At this he called village Kotwar and reported the matter in the police station Gandai. When he saw the body of Rambha Bai, the injuries on her body were visible. The injuries were on head, hand and on all those portions of the body which were not covered with any cloth and the chilli powder was present on almost every part of the body and chilli powder was also lying on the ground where Rambha Bai was lying and the matter was reported by the village Kotwar in the police station.

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(35)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
12.	He has also stated that Ramji was not present there. He has further stated that the club article A-1 was in the hand of Gopal, article A-2 and A-3 club was lying there and article A-4 was lying on the door. In the cross-examination he has stated that he saw accused/appellants Shanti Bai, Ramesh, Deoraj and one more accused person assaulting the deceased with club. Accused/appellants Gopal, Shanti Bai, Santosh and Deoraj were engaged in Maarpeet & occult arts, Ramji was not present and Deoraj was sick and he did not assault Rambha Bai in his presence. Accused Santosh had also not assaulted. Accused/appellant Ramesh assaulted Rambha Bai with article A-2 club as a result of which the club was broken and the broken piece was article A-3. Accused/appellant Shanti Bai was holding Rambha Bai with hair and was pressing chilli powder.	
13.	P.W.-7 Jaageshwar has stated that a day before thereto, of the incident, accused persons were attacking his mother with lathi and sword and the next day accused/appellant Gopal dragged his mother saying that "come otherwise I will kill you" and he took her into his house and thereafter all the accused persons present in the Court assaulted her. The accused persons were accusing her mother that she is practicing witch craft and pressed chilli powder in her mouth.	
14.	P.W.-6 Dr. Ashok Khare who conducted the postmortem on the body of the deceased has stated that on 2nd August 1993 at about 4.00 p.m. he conducted the postmortem on the body of Rambha Bai and found that chilli powder was present on the body of deceased which was also found in the eyes and mouth of Rambha Bai. There was redness in the eyes and her face was swollen. The cheeks were bluish in colour, the hair of the	

[पीछे देखिये

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 8 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

scalp were found uprooted/turn off and there were contusions on the left shoulder in the size of 3x2", on the left side of the breast in the size of 2 x1". Injury on the right elbow in the size of ¼" x ¼ x ¼", there was abrasion on the left knee in the size of ¼ x ¼", there was swelling on the occipital and parietal region. On internal examination he noticed that in the parietal and occipital region of the skull, clotted blood was present. The brain membrane was congested and liquid mixed with blood was found in the brain. The blood clots were present in the perito occipital region of the head. The throat and wind pipe was congested and there was chilli powder in the throat and wind pipe. Clotted blood was found in the right chamber of the heart. All the injuries were in blue contusions and all the injuries were anti mortem in nature. She died on account of head injury as a result of hemorrhage. The injuries were caused by hard and blunt object.

15. The scrutiny of the above evidence reveals that as far as accused Deoraj is concerned, there are no allegations against him that in any manner he participated in the crime in question therefore so far as the conviction of accused/appellant Deoraj under Sections 148,302 and 302/149 of the IPC is concerned same cannot be sustained.

16. As far as involvement of accused/appellants Shanti Bai and Ramesh is concerned, from the above evidence it is evident that both the accused persons took active participation in the crime in question along with accused Gopal (since deceased). Even the chilli powder was pressed in the mouth and eyes of the deceased and P.W.-3 Neelambar whose presence is established on the scene of occurrence as his name finds place in the First Information Report regarding his presence on the place of occurrence has stated that accused/appellant Shanti Bai, Gopal (since

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(37)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —9—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	deceased) and Ramesh were assaulting the deceased and even on his persuasion they did not stop. His evidence is corroborated by P.W.-5 Vasudeo Singh. P.W.-7 Jageshwar saw accused Gopal dragging Rambha Bai into his house and other co-accused persons were also present there. P.W.-7 Jageshwar has stated that they had assaulted his mother doubting her to be a witch and indulged in the practice of witchcraft. In view of the above evidence, the arguments of learned counsel for the accused/appellants that the deceased was being beaten by accused Shanti Bai after the death of Rambha Bai cannot be accepted, particularly, in view of the evidence of Dr. Khare who has stated that all the injuries were ante-mortem in nature.	
	17. PW-1 Champa Lal has stated that when he reached, he saw the chilli powder on the nose and mouth of Rambha Bai and she was dead. He has further stated that Shanti Bai came out of the house and assaulted on the body of Rambha Bai with club on which he said to Shanti Bai as to why she is assaulting the accused on which Ramesh said why are you calling her as Shanti Bai, you should call her "Jai Mata". He has also stated that all the accused persons were present there. Similar is the evidence of PW-2 Bhagu Das.	
	18. The evidence of these witnesses further stands corroborated by the fact that all the articles and the weapon of offence were recovered from the place of occurrence. Moreover their evidence stands corroborated by the fact that as per the medical evidence the chilli powder was found in the mouth, eyes and throat of the deceased. Even the chilli powder was found smeared on the bamboo clubs which were recovered from the place of occurrence.	

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 10 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
19.	Now, coming to the argument of counsel for accused/appellant Shanti Bai that there is no evidence that she in any way assaulted the deceased. The presence of accused/appellants Shanti Bai and Ramesh in the house where the crime in question was committed is established and all the accused persons assaulted Rambha Bai after she was being taken inside the house by accused Gopal (since deceased) by dragging. PW-3 and PW-5 have clearly stated that Ramesh and Shanti Bai also assaulted Rambha Bai.	
20.	Moreover, accused/appellants Shanti Bai and Ramesh have been convicted with the aid of Section 149 of the I.P.C.. Section 141 of the I.P.C. defines the unlawful assembly which envisages that "an assembly of five or more persons is designated an 'unlawful assembly', if the common object of the persons composing that assembly is – First – xxxxx xxxxx xxxxx Second – xxxxx xxxxx xxxxx Third – To commit any mischief or criminal trespass, or other offence; or Fourth – xxxxx xxxxxx xxxxxx Fifth - xxxxx xxxxxx xxxxxx Explanation ---- An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly. Section 149 of the I.P.C. envisages that "If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the	

[पीछे देखिये

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —11—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

time of the committing of that offence, is a member of the same assembly, is guilty of that offence." Section 149 IPC enunciates the principle of vicarious liability involving members of an unlawful assembly for acts done in prosecution of the common object of that assembly or the consequential acts following such common object. The section engraves an exception to the general rule that a person is liable for what he himself does and is not accountable for what others do, and lays down the principle of vicarious liability under which a member of an unlawful assembly becomes liable for an act committed by another member of the said assembly under circumstances mentioned in the section.

21. In order to attract the provisions of Section 149 IPC it is enough if each accused has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The common object of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. For determination of the common object of the unlawful assembly, the conduct of each of the members of the unlawful assembly, before and at the time of the attack and thereafter, the motive for the crime, are some of the relevant considerations. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —12—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

successful". In the matter of **Lalji V. State of U.P.** reported in **1989 (1) SCC 437** the Hon'ble Apex Court observed that:

> "Common object of the unlawful assembly can be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before the scene of occurrence. It is an inference to be deduced from the facts and circumstances of each case."

The Apex Court while interpreting the provisions of Section 149 of the I.P.C. in the matter of **Chanda and others V. State of U.P. & another** reported in **2004 AIR SCW 2954** held that:

> "Section 149, IPC consists of two parts. The first part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was member. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 141, if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of this section. When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse prosecution true; there may be cases which would come within the second part but not within the first part. The distinction between the two parts of Section 149 cannot be ignored or obliterated. In every case it would be an issue to be determined, whether the offence committed falls within the first part or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part. However, there may be cases which would be within first part of the offences

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(41)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —13—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

committed in prosecution of the common object would also be generally, if not always, within the second part, namely, offences which the parties knew to be likely committed in the prosecution of the common object."

Applying the above principle in view of the evidence available on record the case which has emerged from the prosecution evidence was that the accused persons were doubting Rambha Bai (since deceased) to be a witch, accused Gopal was a Pujari and he was a 'Baiga' who used to practice occult arts in order to treat the persons/patients. It is evident from the various articles recovered from the house of Gopal that some Trishul and photographs of Durga were recovered. Since these persons were doubting Rambha Bai to be a witch, accused Gopal dragged Rambha Bai into his house and thereafter Gopal, these two accused/ appellants and other juvenile accused started assaulting Rambha Bai and number of injuries were sustained by Rambha Bai on head, face and other parts of the body which has been referred earlier and she died on account of head injury.

22. The above facts, circumstances, evidence and acts of the accused/appellants show that the accused persons were having common object to cause death of the deceased in order to get rid of her and in furtherance of that common object the accused persons assaulted the deceased. Even Chilli powder was pressed into mouth, nose and eyes of the deceased. Moreover, by doing such acts, the accused persons were knowing that by doing such acts, they may likely to cause death of the deceased in the ordinary course of nature. In the present case, from the facts, circumstances and acts of the accused persons, it can safely be held that the act of the accused persons falls in first and second part both.

[पीछे देखिये

(42)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -14-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Therefore, the accused persons have been rightly convicted with the aid of Section 149 IPC by the trial Court.	
23.	Learned counsel for the accused/appellants argued that from the evidence it is not established that the accused persons assaulted the deceased with intention to cause her death, rather they wanted to teach her a lesson so that she should not indulge in the practice of witchcraft.	
24.	As per the settled law, normally no direct evidence is available in order to ascertain the intention of the accused. The intention can be gathered from the circumstances and the manner in which the accused persons acted while committing the crime. The manner in which the accused inflicted the injury, the manner in which they behaved and the part of the body where the injuries were inflicted, it is evident from the evidence that the accused persons considering that the deceased to be a witch and she indulged in the practice of witchcraft, accused Gopal dragged her inside his house and thereafter all of them indulged in attacking her with clubs and the injuries were inflicted on her head, chest and hand and as per the medical evidence of Dr. Khare, deceased Rambha Bai died on account of the injuries she received on the head and it was found on dissection of the head that there was clotted blood in the skull in the parietal and occipital region and blood mixed material, liquid was found in the brain. He has stated that chilli powder was also found in the throat and the wind pipe as a result of which the lungs were congested and the doctor has stated that she died on account of excessive bleeding in the brain. The accused persons attacked the deceased in a barbaric and inhuman manner, looking to the nature of injuries and the common object with which she	

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(43)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -15-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	was attacked, considering her as witch establishes the intention of the accused to cause her death.	
25.	In the result we do not find any illegality or infirmity in the impugned judgment of the trial Court as far as convicting accused/appellants Ramesh and Shanti Bai under Sections 148, 302 and 302/149 of the IPC. Further, the appeal of accused Deoraj succeeds and same is allowed. The conviction and sentence imposed upon him under Sections 148, 302 and 302/149 of the IPC are set aside and he is acquitted of the charges. Since accused/appellant Deoraj is already on bail, therefore, he need not to surrender the bail bonds and the bail bonds are discharged. However, the appeals of accused/appellants Shanti Bai and Ramesh are dismissed.	
	Sd/- L.C.BHADOO Judge	Sd/- DHIRENDRA MISHRA Judge

Suguna/Baive

[पीछे देखिये

18.4.06